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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Seventh session

SUMMARY RECORD OF THE 8th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 27 November 1992, at 11 a.m.

Chairman: Mr. ALSTON

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The meeting was called to order at 11.15 a.m.

ORGANIZATION OF WORK (agenda item 2) (continued)

General comment on the economic, social and cultural rights of the elderly and the old (E/C.12/1992/WP.1)

1. Mrs. JIMENEZ BUTRAGUEÑO, introducing her draft acknowledged the assistance received from the Centre for Social Development and Humanitarian Affairs, specialized agencies, in particular the World Health Organization and the International Labour Organisation and a number of non-governmental organizations.

2. She noted that the General Assembly had designated 1 October as International Day for the Elderly.

3. The CHAIRMAN thanked Mrs. Jiménez Butragueño for having single-handedly opened up a new dimension of the work of the Committee.

4. The United Nations Principles for Older Persons would soon be distributed to the Committee which might wish to take them into account in its consideration of the topic.

5. Mr. SPARSIS congratulated Mrs. Jiménez Butragueño on her valuable paper.

6. He drew attention to a new organization recently created to promote the rights of the elderly and the retired: the European Federation of Retired and Elderly People (EFREP), affiliated with the European Trade Union Confederation and the International Confederation of Free Trade Unions. EFREP was currently drafting a charter of rights that should be ready by March 1993. It would then be submitted to the European Parliament, which would be urged to issue directives to the member States of the European Community. EFREP was also seeking to activate trade unions at national level to bring pressure to bear on Governments to protect the interests of the retired and the elderly. EFREP had drafted a list of activities for 1993, which it had declared the Year for the Retired and the Elderly. It had also set a number of priorities. Firstly, pensions for the elderly and the retired must be adequate, i.e. 80 per cent of the average wage at national level. Secondly, the place of the retired and the elderly in mainstream society must be rehabilitated. Thirdly, the retired and the elderly must be allowed to pursue meaningful employment, either on a voluntary or a paid basis. Fourthly, the retired and the elderly required geriatric clinics, home services and other special facilities.

7. The members of the Committee must find ways to serve as prime movers in their own countries in promoting such goals. They could work with trade unions, employers and Governments to that end.

8. The Committee might consider expanding its guidelines to include questions on the efforts being undertaken at national level in favour of the elderly and the retired. It should enter into contact not only with EFREP but also with other regional and international bodies concerned with the subject.

In his view, the Committee should wait until May 1993 before deciding on the action to take on the question, because the completed EFREP charter, scheduled for March 1993, might serve as a useful basis for further work.

9. The CHAIRMAN said that it might be useful for the Committee to schedule a day of general discussion on the topic at its May 1993 session. Mrs. Jiménez Butragueño might invite a group of participants to attend. The discussion would lead either to the adoption of the general comment or to its revision.

10. Mr. WIMER ZAMBRANO commended Mrs. Jiménez Butragueño for her efforts in drafting the general comment.

11. He thought, however, that before addressing substantive questions, the Committee should define its criteria and standards for drafting documents. It was important to adopt succinct guidelines to serve as a model for the drafting of such documents in the future.

12. Mr. SIMMA congratulated Mrs. Jiménez Butragueño on her paper, which had awakened an awareness for the problems of the elderly and the retired.

13. Her draft general comment was a good starting point, but should perhaps have more normative content, and should discuss the normative consequences to be drawn from the developments it described. It might be useful to examine the efforts of United Nations and of regional bodies, both governmental, and intergovernmental. The Committee should also take a close look at General Assembly resolution 45/106.

14. He thought that Mr. Sparsis had made an interesting point about the charter being drafted by EFREP. Before formulating principles, the Committee should undertake a thorough study of the documents currently in preparation. It should also envisage using one or two interns to do the relevant groundwork.

15. He supported the Chairman's suggestion that one day of the May 1993 session might be devoted to a discussion of the topic, and he agreed with Mr. Wimer Zambrano on the need to adopt a model outline to help in producing documents, although that should not curtail the zeal of those working on such documents at the preparatory stage: uniformity could be introduced at a later stage.

16. The figures for the increase in the number of persons over 60 and over 80 years of age given in paragraph 2 of the draft general comment should be related to a specific period of time, presumably one month. Moreover paragraph 5 was incorrect in indicating that the safeguarding of economic, social and cultural rights was one of the Committee's tasks, since in actual fact it was its only task. The reference to the granting of priority attention to the elderly from the psychological viewpoint of giving some content to their life, contained in paragraph 8, might be inappropriate, since it was doubtful whether it was up to the State to perform that task. In the final document it would be unwise to refer to particular States as setting a good or bad example, and the abolition of the mandatory retirement age would create a conflict of interests by blocking the promotion of younger people.

17. Mrs. JIMENEZ BUTRAGUEÑO pointed out that a representative of ILO had observed that her text seemed to be fairly comprehensive and that it referred to the latest ILO recommendations on disability pensions and elderly workers. ILO itself recommended greater flexibility in those respects. The international scene had changed substantially. In 1969 persons of retirement age in Germany had been invited to continue to work. She was not advocating that persons who did not wish to go on working should be obliged to work but that those who wished to continue to work should be given an opportunity to do so. Spain, for example, was one of the most rigid countries in that connection: retired persons who worked, even if by doing so they created jobs for other people, automatically lost their pensions. The number of elderly persons was increasing. She was not opposed to helping the young, but was in favour of promoting greater flexibility. What she had written was fully in keeping with ILO's approach. OECD and the European Community had also recommended greater flexibility, while Canada had adopted specific measures to permit civil servants of retirement age to continue working.

18. She agreed that too hasty an approach should be avoided. However, questions concerning the elderly ought to be taken into account by the pre-sessional working group, which should include them in its lists of questions. Some States parties had provided information on the elderly spontaneously, but in general, unless such information was specifically requested, it was unlikely to be supplied.

19. Mr. MRATCHKOV thanked Mrs. Jiménez Butragueño for her efforts to make the Committee and public opinion more aware of the problems of the elderly. Her draft general comment provided a good basis for discussion. However, it stressed the social aspects of the issue but did not develop the interpretative aspects. The fact that the Covenant did not specifically mention the elderly did not mean that it did not cover their situation. The justification for dealing with the problems of the elderly was probably to be found in article 2 (2). Age was not specifically mentioned there, but the elderly were presumably included in the formulation used. The Committee must try to detect the particular problems of the elderly in respect of each article of the Covenant, bearing in mind that some articles, such as those relating to the right to work, social security and cultural rights, were of greater concern to them than were the provisions relating to education, for example.

20. Paragraph 10 of the draft general comment really dealt with two different problems, the legal age of retirement and the age at which retirement became obligatory, which should be separated.

21. The Committee's efforts to identify the specific problems of the elderly should be made in the pre-sessional working group and during the consideration of reports submitted by States parties. It would be inadvisable to revise the guidelines for the preparation of reports, since Governments were not yet sufficiently familiar with them and changes might lead to confusion.

22. Mr. RATTRAY, noting that the draft general comment documented some of the developments that had taken place, said that the Committee was concerned with the elderly and the old because their special conditions required special treatment in the implementation of the Covenant. The Committee needed to

identify those conditions in terms of needs, problems and the unique contributions which the elderly could continue to make in their own societies. A fine balance had to be found in the apparent conflict between the aspirations of the young and the needs of the elderly. Some provisions of the Covenant, such as those contained in articles 9, 11, 12 and 15, were clearly of greater importance to the elderly than were others. In determining how far the State was responsible for the care of the elderly it might be necessary to study characteristic situations in different countries and the extent to which they enabled the elderly to enjoy life. Any guidelines that the Committee might provide must be seen in that context and not as a series of abstract principles.

23. Mr. MUTERAHEJURU said that while he was appreciative of Mrs. Jiménez Butragueño's extensive research, when reading the draft general comment he had had the impression that part of the world's population had been overlooked. Life expectancy statistics showed that there were those who did not reach an advanced age. It was good to address the problems of the elderly but the Committee should try first to guarantee the right to achieve old age.

24. In continents like his own, there was no specific age for retirement for a large proportion of the population. Farmers, for example, worked until the end of their lives; if they became too old to work, they were cared for by their children, who inherited their land and livestock. Arrangements such as those should be taken into consideration in the draft general comment. A distinction also had to be made between the urban population and the rural population. The population in his own country and in Africa was in the main rural. The right to participate in cultural life and social security were more relevant to urban populations than to rural ones. As regards culture in a family sense, a different approach was needed. In countries like his own, the problems of the elderly had to be considered in general terms rather than in those applicable to developed societies. Nevertheless, the draft general comment did relate to that proportion of the population of his own country that was salaried. When speaking of salaried employees, however, one should not overlook the fact that the essential problem for the population of his country was the enjoyment of the right to health, education and employment. It should also be borne in mind that there were societies which were beset by infant mortality and priority attention needed to be given to that situation. The problem of the elderly should be considered but without overlooking that part of the population which did not reach old age.

25. Mr. NENEMAN said that the problem of the elderly and the old was not new to the United Nations; what was new was that, as Mrs. Jiménez Butragueño had stressed, there were more elderly and old people in relation to the rest of the population than ever before, and their situation was deteriorating. The situation in his own country might be similar to that in other countries also undergoing a transition. The situation of the old was deteriorating because the old solutions were not working and new ones had not been developed. Formerly, basic necessities such as housing, food and health had been cheap: about 10 to 20 per cent of a retired person's pension paid for an apartment. But since market mechanisms had begun to operate, pensioners had to pay 50, 60 or 70 per cent of their retirement pension for the same apartment. That left very little for food, which was no longer subsidized and had also become more expensive. Health care had been totally free; it was still free, but only at

a certain level. In case of hospitalization or an operation, there was practical discrimination against the old. If they needed an operation, they were shunted aside in favour of the young. The situation was especially difficult in large towns.

26. In addition, a retirement pension was normally a repayment of what had been paid into the pension fund by the employee or employer in the course of years of work. In practice, retirement pensions were paid out of the State budget. Efforts were made to cut pensions whenever there was a deficit in the budget. Pensions had to be legally defended as the money to which the retired person was entitled. The right to work was also involved: retirees could work but could not earn more than 60 per cent of the average national salary without forfeiting part or all of their pension. That situation encroached on the right to work. Retirement pensions seemed to be in the nature of a gift which could be withheld; they should not be considered as a gift but simply as what the employee had earned.

27. The problem of the elderly was not simple: it had been pointed out that in Africa the situation of the elderly was better.

28. In his own country that was also true in the countryside: citizens could work until the end of their lives. He thanked Mrs. Jiménez Butragueño for starting the ball rolling, but warned the Committee against undue haste in reaching its conclusions. It might be a good idea to ask Governments what they were doing for the elderly, and since the answers were bound to be different, a list of suggestions could be drawn up as a basis for more mature suggestions for action.

29. Mr. FOFANA, commending Mrs. Jiménez Butragueño on her research, said that he hoped that since developments had led to the Convention on the Rights of the Child, similar developments might lead to a convention on the rights of elderly and the old. He drew attention in particular to the first and second sentences in the third paragraph of Mrs. Jiménez Butragueño's draft general comment. He agreed that statistics had shown a tendency to ageing in countries south of the Sahara, but thought that there was room for other explanations than the one that had been given. In the African countries in general the ageing of the population was the result of the lowering of the retirement age, particularly in those countries undergoing structural adjustments. In those countries there were several ways of sending people into retirement: pre-retirement, retirement and voluntary retirement. On the basis of statistics established from that data it might be thought that the population was ageing in a certain category of developing countries. Consideration should continue to focus on problems of work, security and education of the elderly; Mrs. Jiménez Butragueño's paper would thereby be enriched.

30. Ms. PINET (World Health Organization), thanking Mrs. Jiménez Butragueño, expressed WHO's support for the Committee's work on the rights of the elderly and the old. The comments made on the paper had been enriching and constructive. The idea of having a day of discussion on the question at the Committee's May 1993 session would be helpful in evaluating the problem in different parts of the world. Some considerations had been inspired by

emotional acquaintance with the elderly rather than a thorough statistical knowledge of the problem. WHO would be happy to participate and could also furnish names of other interested parties outside WHO.

31. Replying to Mr. Simma's comment that the document did not lead to a normative analysis of needs in the field, she recalled that WHO, together with a professor of law specializing in the problems of the elderly, doctors from WHO and gerontologists, had conducted and published a comparative study of legislation in 32 European countries. That study had been published one or two years ago and she had given a copy to Mrs. Jiménez Butragueño. It would not be hard, on the basis of that study, to draw up a list of normative aspects of the problem, since the advances in legislation of some countries could be seen as well as what could be done in future to improve health and social legislation for the elderly. The Committee would thus be enabled to ask questions systematically. When Mrs. Jiménez Butragueño had asked questions about the elderly in Norway, the Norwegian representative had said his country had not addressed the problem because it had not been asked specific questions. It was only through more questions that the Committee would bring out the issue in its discussions.

32. Mrs. JIMENEZ BUTRAGUEÑO asked members of the Committee to submit their comments to her in writing and recommended that they should read her paper of the previous year (E/C.12/1991/WP.1 and Add.1) containing the questions she wished to have put to Governments. In future, questions on the elderly should be included in the Committee's list of questions. She thanked Mr. Sparsis for the information he had given; she herself was not a jurist and needed the support of legal experts. She expressed gratitude to Mr. Mratchkov for his comment on how article 2 (2) of the Covenant could be linked up with rights of the elderly. In reply to Mr. Muterahejuru she said that she had been aware when dealing with the problem of the elderly that there were many other burning issues in the world. The situation of rural workers in Spain, like those in Africa, was better because their families helped. However, many elderly persons in Spain were in a dire situation; there were many paediatricians and general practitioners but few geriatric specialists. She looked forward to a discussion the following year in which qualified people working with the elderly and the old would participate.

33. The CHAIRMAN observed that legislation against age discrimination was being adopted in a number of Western countries; he himself acted in a part-time capacity as the anti-discrimination commissioner in Canberra, inter alia, drafting legislation relating not only to the elderly but to people of all ages. It was being suggested increasingly that someone at 35 or 40 years of age was too old for a certain kind of work: there were thus many forms of discrimination based on age. It would be a significant breakthrough in the jurisprudence of the Committee if it were able to say definitively that other forms of discrimination to which Mr. Mratchkov referred in article 2 (2) of the Covenant clearly included discrimination on grounds of age. The Committee might give consideration to the possibility of making such a statement.

34. He asked the Committee and Mrs. Jiménez Butragueño in particular whether there was general agreement not to seek to adopt a general comment at the current session, but rather to work further on the question and to take it up

at the next session when, in principle, a day of general discussion would be devoted to the rights of the elderly and related issues.

35. He said that if there was no objection he would take it that the Committee wished to follow that course of action.

36. It was so decided.

37. The CHAIRMAN, said that it seemed to him that the issue raised by Mr. Muterahejuru was very important, but should not be misunderstood. It was not that what happened to children was more important than what happened to the elderly. Rather, in addressing the elderly, account had to be taken of the fact that in many different countries the term "elderly" might include people of a much lower age and that the needs of those elderly might be very different from the needs identified so far. There needed to be concerted effort, which fitted into the framework of the draft, to study the particular challenges facing people who might be called elderly in traditional societies in developing countries.

38. Finally, in reply to the point raised by Mr. Wimer Zambrano, he said he would be happy to provide the Committee with a rough draft of guidelines in relation to drawing up general comments in the future.

The meeting rose at 1 p.m.